IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

Appeal (Ld) No. 666 of 2003
in
Arbitration Petition No. 96 of 2003

M/s Susaka Pvt.Ltd ..Appellants

vs.

1. Union of India & others ..Respondents

Shri Girish S.Godbole with Shri S.M.Sahastrabudhe for appellants.
Shri Suresh Kumar for respondents.

CORAM: A.P.SHAH &
S.J.VAZIFDAR JJ.
11th February,2005

P.C.

Appeal admitted. Notice made returnable forthwith. Respondents waive service. By consent, appeal called out and heard.

2. The appellant company was given the work for repairs of starters in terms of the agreement dated 19th December, 1994. The contract was to be completed on or before 30th December, 1995. The duration of the contract was for a period of 15 months. There is no dispute that the said contract was extended on various occasions upto August, 1996. It appears that on 1st December, 1995, the appellant wrote to the respondents that 3 starters are ready for dispatch and thereafter on 11th December, 1995, the appellant wrote to the

respondents to release further 8 starters for repairs. The respondents did not give to the appellant any further starters for repairs. Thus, the dispute having arisen the matter was referred to the Arbitral Tribunal. The Arbitral Tribunal by its award dated 9th September, 2002 allowed various claims made by the appellant on which interest has been also awarded. The arbitration award was challenged under sec.34 of the Arbitration and Conciliation Act, 1996 by Arbitration Petition No.96 of 2003. This petition was partly allowed by the learned single Judge by setting aside the interest awarded in the sum of Rs.8,12,89,033 upto the date of award. The learned single Judge has held that as Claim nos.1.2, 1.3, 1.4, 1.5, 2.1, 1.7 and 2.2 are by way of damages, the interest could have been awarded only on the award being passed as then only it becomes a debt or the sums become crystalised and thus the award of interest was contrary to law and public policy of the country.

3. Mr.Godbole, learned counsel appearing for the appellants submitted that under sec.31(7)(a) of the Act, the Arbitral Tribunal is empowered to award interest at such rate as it deems reasonable for the whole or any part of the period between the date on which the cause of action arose and the date on which award is made. In sofar as the

aforesaid period is concerned, the Act in fact provides that the amount awarded shall carry interest at the rate of 18% p.a. unless the award otherwise directs. The Arbitrators have exercised their discretion in a manner which is specifically provided in sub-sec.(7) of sec.31. The award of interest was thus proper and the learned single Judge has erred in setting aside the award. Mr.Godbole further submitted that even under the old Arbitration Act of 1940 it was permissible for the arbitrators to award interest on damages. He referred to the decisions of the Supreme Court in the case of Secy.Irrigtation Deptt. Govt. of Orissa Vs. G.C.Roy; (1992) 1 SCC 508, Executive Engineer, Dhenkanal Minor Irrigation Division,Orissa & Others Vs. N.C.Budharaj (deceased) by LRs and others; (2001) 2 SCC 721; T.P.George Vs. State of Kerala and another; AIR 2001 SC 816 and Oil and Natural Gas Commission vs. M.C.Clellard Engineers S.A., 1999(4) SCC 427. On the other hand Mr.Suresh Kumar learned Counsdel for the respondents relying upon a decision of the Supreme Court in Union of India Vs.A.C.Ralling Ram A.IR 1963 SC 1685 submitted that it is not permissible for the Arbitral Tribunal to award interest on damages and the claim for interest was rightly disallowed by the learned single Judge.

4. Under the Arbitration Act of 1940 there was considerable debate and discussion as to what was the interest payable during the prereference period, during the period of arbitration and post award period and as also what should be the rate of interest payable during these periods. Ultimately in G.C.Roy's case the Constitution Bench declared in unmistakable terms that basic proposition that a person deprived of the use of money to which he is legitimately entitled has a right to be compensated for the deprivation, by whatever name it may be called, viz. interest, compensation or damages, "is as valid for the period the dispute is pending before the arbitrator as it is for the period prior to the arbitrator entering upon the reference." This legal position was reiterated by the Constitution Bench judgment in N.C.Budharaj's case where the court held that the arbitrator appointed with or without the intervention of the court, has jurisdiction to award interest, on the sums found due and payable, for the pre-reference period, in the absence of any specific stipulation or prohibition in the contract to claim or grant any such interest. In a recent decision in T.P.George Vs.State of Kerala, which is also a case under the old act, the Court held that interest can be awarded at all four stages viz. (1) from the state of accrual of cause of action till filing of the

arbitration proceedings, (2) during pendency of the proceedings before arbitrator, (3) further interest arising between date of award and date of the decree and (4) interest arising from date of decree till realisation of award.

5. In yet another decision in Oil and Natural Gas Commission Vs. M.C.Cleflland Engineers S.A. the Supreme Court has recognised that the Arbitrator has power to grant interest under both the heads - (i) balance of amount claimed under the invoices and (ii) interest on delayed payment. In para 4 the Supreme Court observed thus:

> "4. There cannot be any doubt that the arbitrators have powers to grant interest akin to S.34 of the C.P.C. which is the power or the Court in view of S.29 of the Arbitration Act, 1940. It is clear that interest is not granted upon interest awarded but upon the claim made. The claim made in the proceedings is under two heads - one is the balance of amount claimed under invoices and letter dated 10.2.1981 and the amount certified and paid by the appellant and the second is the interest on delayed payment. That is how the claim for interest on delayed payment stood crystallized by the

> time the claim was filed before the arbitrators. Therefore, the power of the arbitrators to grant interest on the amount of interest which may, in other words, be termed as interest on damages or compensation for delayed payment which would also become part of the principal. If that is the correct position in law, we do not think that S.3 of the Interest Act has any relevance in the context of the matter which we are dealing with in the present case..."
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> (Emphasis supplied)

6. In the light of this settled legal position it is difficult to sustain the view that interest cannot be awarded on the amount of damages prior to the date of award. The decision in R.L.Rallia's case on which Mr.Suresh Kumar has placed reliance has merely observed that in the absence of any usage or contract or any provision of law to justify award of interest, interest cannot be awarded by way of damages for wrongful detention of money. This judgment has no application after the enactment of sec.31(7) of the Act. Sec.31(7) specifically contemplates that, in a situation where the parties have not agreed upon a rate of interest, the Arbitral Tribunal when awarding

payment of money may include in the sum for which the award is made interest at such rate as it deems reasonable on the whole or any part of the money, for whole or any part of the period between the date on which cause of action arose and the date on which the award is made. Thus, under the 1996 Act the matter of interest is left entirely to the discretion of the Arbitral Tribunal. In the present case the arbitrators had not accepted the termination of the contract as valid and as such they were of the view that in respect of the amount awarded against the claims, interest is payable to the claimants. The arbitrators noted that the interest rates were falling from 1995 onwards and awarded interest at the rate of 15% p.a. upto the period of reference and 12% p.a. from 6th May, 1979 to the date of award i.e. l9th September, 2002. The jurisdiction of the Court to interfere with the award is confined to matters enumerated in section 34 of the 1976 Act. We do not think that the contention of respondents about interest would fall within the ambit of section 34 to interfere with the award.

7. In the result, appeal succeeds. The order of the learned single Judge to the extent of setting aside the award of interest is quashed and set aside.

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CIVIL APPELLATE FCJURISDICTION

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Date of Judgment: 11th February, 2005.

For approval and signature of:

The Hon'ble Mr.A.P.SHAH J.

The Hon'ble Mr.S.J.VAZIFDAR J.

1. Whether the Reporters of the local papers may be allowed to see the judgment/order?

2. Whether to be referred to the Reporters or not?

3. Whether Their Lordships wish to see the fair copy of the judgment?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?

5. Whether it is to be circulated to the Civil Judges?

6. Whether the case involves an important question of law and whether a copy of the judgment should be sent to Nagpur Aurangabad and Goa offices?